THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : 29.03.2007

\+ **WP (C) 2076/2007**

COSMOS FLIGHT LTD. & ORS ...Petitioners

- versus -

THE BANK OF RAJASTHAN LTD. & ORS. ...Respondents

Advocates who appeared in this case:
For the Petitioner : Mr Prag Chawla
For the Respondent No.1 : Mr Rajiv Shakhder, Sr. Advocate with Mr Nabik Syam and Mr Amit Mishra

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against the order passed by the Debts Recovery Tribunal on 15.02.2007 whereby the interim order dated 15.10.2004, which was subsequently confirmed on 13.01.2005, was vacated.

2. The impugned order has been passed because an application had been moved by the respondent /bank for vacation of the said interim order. The application had been moved by the respondent/ bank in view of the recent decision of the Supreme Court in the case of ***M/s. Transcore v. Union of India & Another: 2006 (12) Scale 585***, wherein the Supreme Court held that

proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as well as under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 could be initiated and continued simultaneously. In the present case the bank had already initiated proceedings under the 1993 Act and during the pendency of these proceedings before the Debts Recovery Tribunal, notice under Section 13(2) of the 2002 Act was issued. The petitioner herein had approached the Debts Recovery Tribunal for staying the operation of the said notice. And at that point of time, the position in law was unclear as to whether proceedings under both the acts could be taken by the banks simultaneously. It is in these circumstances that the interim orders were passed by the Debts Recovery Tribunal.

3. The Supreme Court having clarified the position in the case of ***Transcore*** (supra) that both the proceedings could continue simultaneously, the bank moved an application for vacation of the stay granted by the Debts Recovery Tribunal. One of the submissions made by the learned counsel for the petitioner was that the petitioner was not heard while the Debts Recovery Tribunal passed the impugned order.

4. Initially, I was also impressed by this argument when I issued notice on 22.03.2007. However, Mr Shakhder, who appears on behalf of the

respondent/ bank has been able to demonstrate that notices were, in fact, served on the petitioner and even summons were issued to the petitioner on the basis of the application moved by the bank. It is in this context that the impugned order records the following:-

> "Nobody appeared on behalf of the defendants nor filed any objection."

This obviously indicates that the petitioner chose not to appear. In any event, *de hors* the issue of notice to the petitioner, the situation now is amply clear because of the decision of the Supreme Court in the case of ***Transcore*** (supra) that both proceedings can continue simultaneously. The stay was granted when this position was unclear and it was contended on behalf of the petitioner that the proceedings under the two acts could not be maintained simultaneously. That legal impediment sought to be raised is now no longer in existence and, therefore, there is nothing wrong in the Debts Recovery Tribunal vacating the earlier stay after the matter has been clarified by the decision of the Supreme Court.

5. Lastly, it was contended by the learned counsel for the petitioner that once a stay had been confirmed, there was no matter pending before the Debts Recovery Tribunal, as a result of which the impugned order vacating the stay could not have been passed. The answer to this is that the stay was granted in relation to the pending application moved by the bank under the 1993 Act.

The argument advanced by the learned counsel for the petitioner at the time of obtaining the stay order was that proceedings under the 1993 Act had already been taken by the bank and, therefore, they be restrained from taking similar proceedings under the 2002 Act. Being impressed by this argument, the stay was granted. Now, that the Supreme Court has clarified the position, it was open to the Debts Recovery Tribunal to vacate the stay in view of the fact that the original application filed on behalf of the bank under the 1993 Act was still pending before the Debts Recovery Tribunal. It may be also noted that in the impugned order the case filed by the bank under the 1993 Act is also listed for final arguments on 03.04.2007 and it is hoped that the same would be disposed of expeditiously. The remedy available to the petitioner under the 2002 Act is, as indicated by the Supreme Court, by way of an application under Section 17 thereof. This is also indicated in the impugned order.

6. Accordingly, I find no reason to interfere with the impugned order. This writ petition is dismissed.

BADAR DURREZ AHMED
(JUDGE)

March 29, 2007
SR